

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

HOUSE BILL 1015

**47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005**

INTRODUCED BY

Andy Nuñez

AN ACT

RELATING TO THE PRODUCTION OF OIL AND GAS; ENACTING THE SURFACE OWNERS' PROTECTION ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the "Surface Owners' Protection Act".

Section 2. DEFINITIONS.--As used in the Surface Owners' Protection Act:

A. "agricultural production" means:

(1) the production of any growing grass or crop, whether or not the grass or crop is to be sold commercially; or

(2) the husbandry of any domestic animals, whether or not the animals are to be sold commercially;

B. "oil and gas operations" means activities

.156475.1

underscored material = new  
[bracketed material] = delete

1 intended to lead to the exploration for oil or gas, drilling of  
2 an oil or gas well or production of oil or gas and that require  
3 entrance upon the surface of land. Oil and gas operations  
4 include geophysical and other exploration activities, drilling  
5 of an oil or gas well, work overs, re-entries, recompletions,  
6 secondary or tertiary projects and any other completion or  
7 production operations;

8 C. "producer" means the person with the legal right  
9 to conduct oil and gas operations on the surface of the  
10 property; and

11 D. "surface owner" means the person who holds  
12 equitable title to the surface of the property on which the oil  
13 and gas operations are to take place.

14 Section 3. NOTICE OF OPERATIONS--OFFER OF SETTLEMENT--  
15 ARBITRATION.--

16 A. No less than forty-five days before first  
17 entering the surface of land to conduct oil and gas operations,  
18 the producer shall give the surface owner written notice of the  
19 contemplated oil and gas operations. The notice shall include:

20 (1) sufficient disclosure of the planned oil  
21 and gas operations to enable the surface owner to evaluate the  
22 effect of the operations on the property;

23 (2) a form, prepared by the oil conservation  
24 division of the energy, minerals and natural resources  
25 department, advising the surface owner of the surface owner's

underscored material = new  
[bracketed material] = delete

1 rights and options under the Surface Owner's Protection Act;  
2 and

3 (3) an offer of settlement to compensate the  
4 surface owner for damages, including loss of use, to the  
5 property. The offer may be in the form of a lump-sum payment,  
6 periodic installments paid over the time that the oil and gas  
7 operations will take place or a formula that will determine the  
8 proposed method and extent of the compensation.

9 B. The notice required by this section shall be  
10 given to the surface owner of record and any purchaser under  
11 contract at their addresses as shown by the records of the  
12 county clerk at the time that the notice is given.

13 C. Upon receipt of the notice required by  
14 Subsection A of this section, the surface owner may:

15 (1) within twenty days of receiving the  
16 notice, accept the offer of settlement in writing. Upon  
17 acceptance of the offer of settlement, the offer shall be  
18 construed to be a binding contract between the producer and the  
19 surface owner; or

20 (2) reject the offer of settlement and enter  
21 into negotiations with the producer, in accordance with the  
22 provisions of Subsection D of this section.

23 D. Unless otherwise agreed to by the producer and  
24 the surface owner, negotiations shall address at least the  
25 following issues:

.156475.1

underscoring material = new  
[bracketed material] = delete

1 (1) placement, specifications and design of  
2 roads to be constructed for oil and gas operations;

3 (2) points of entry upon the surface for oil  
4 and gas operations and precautions to preserve the safety and  
5 security of the surface owner;

6 (3) construction and placement of all pits and  
7 equipment used or planned for oil and gas operations;

8 (4) use and impoundment of water on the  
9 surface of the land;

10 (5) removal of plant life;

11 (6) surface water drainage changes caused by  
12 oil and gas operations;

13 (7) erosion control and actions to limit  
14 erosion, control and manage noise, weeds, dust, traffic,  
15 trespass, litter and interference with the surface owner's use;

16 (8) interim and final reclamation;

17 (9) best surface-use practices and  
18 minimization of surface damage and impacts to the land, water,  
19 value and peaceful enjoyment of the property; and

20 (10) producer responsibility and liability for  
21 injury, harm and damages to the property or surface owner  
22 caused by the producer's contractors, agents, representatives  
23 or others acting on their behalf.

24 E. If the producer and the surface owner fail to  
25 reach an agreement after good faith negotiations, either party

.156475.1

underscoring material = new  
[bracketed material] = delete

1 may give written notice to the other party of that failure.  
2 Within ten days after receipt of the notice, either party may  
3 notify the other party in accordance with the provisions of  
4 Section 44-7A-2 NMSA 1978 of the initiation of binding  
5 arbitration to be conducted pursuant to the Uniform Arbitration  
6 Act. If notice to arbitrate is given pursuant to this  
7 subsection, the parties shall be deemed to have agreed pursuant  
8 to the Uniform Arbitration Act to submit to arbitration  
9 regarding compensation and other disputed terms of the surface-  
10 use agreement. The arbitration process may be abandoned or  
11 suspended at any time prior to the issuance of the arbitrator's  
12 award through mutual written agreement of the producer and the  
13 surface owner.

14 Section 4. COMPENSATION AND LIABILITY FOR OIL AND GAS  
15 OPERATIONS.--

16 A. A producer shall reasonably compensate the  
17 surface owner for the use of the owner's property and any  
18 damages expected to result from its oil and gas operations on  
19 the owner's property. A producer shall be liable to the  
20 surface owner for all damages, including harm, injury or loss  
21 of use, sustained by the surface owner or the tenant of the  
22 surface owner as a direct result of the producer's oil and gas  
23 operations. Damages shall include lost agricultural production  
24 and the lost income therefrom, diminished land value, lost use  
25 of and access to the land, lost or diminished value of

.156475.1

underscored material = new  
[bracketed material] = delete

1 improvements and damage to the watershed, aquifers or water  
2 supplies on or underneath property.

3 B. The liability established or confirmed by this  
4 section is intended to compensate the surface owner for  
5 damages, including loss of use. Any attempted reservation or  
6 assignment of such compensation from the surface estate, except  
7 to a tenant of the surface estate, is null and void.

8 C. In the absence of an agreement between the  
9 surface owner and a tenant of the surface estate regarding the  
10 division of compensation paid to satisfy the liability  
11 established or confirmed by this section, the tenant shall be  
12 entitled to recover from the surface owner only that portion of  
13 the compensation attributable to the tenant's share of the  
14 damages sustained.

15 Section 5. CAUSES OF ACTION--OPERATING WITHOUT  
16 AGREEMENT--DAMAGES.--

17 A. If a producer willfully and knowingly begins an  
18 oil and gas operation on the surface owner's property before a  
19 settlement agreement is entered into by the producer and the  
20 surface owner or, in the case of arbitration, before an award  
21 is imposed by an arbitrator, the surface owner may bring an  
22 action for treble damages in the district court of the county  
23 in which the oil and gas operation occurs.

24 B. Damages shall be a question of fact, based upon  
25 the issues required to be addressed in Subsection D of Section  
.156475.1

underscored material = new  
[bracketed material] = delete

1 3 of the Surface Owner's Protection Act and any other relevant  
2 factors, and may be determined by the judge.

3 C. Damages awarded pursuant to this section shall  
4 not preclude the surface owner from collecting any additional  
5 damages caused by subsequent actions of the producer.

6 D. If, in an action brought pursuant to Subsection  
7 A of this section, the court awards compensation to the surface  
8 owner and finds that the producer did not give the notice of  
9 operations required by Section 3 of the Surface Owner's  
10 Protection Act, the court may also award the surface owner  
11 punitive damages.

12 Section 6. INTERPRETATION OF ACT.--The Surface Owner's  
13 Protection Act shall be interpreted to benefit surface owners  
14 regardless of whether the mineral estate was separate from the  
15 surface estate and regardless of who executed the document that  
16 gave the producer the right to conduct oil and gas operations  
17 on the surface.

18 Section 7. REMEDIES NOT EXCLUSIVE.--The remedies provided  
19 by the Surface Owner's Protection Act are not exclusive and do  
20 not preclude a person from seeking other remedies allowed by  
21 law.